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**Legal, Financial, Scientific, Technical and Patent Translations**

**11 BROADWAY**

**NEW YORK, NY 10004**

**10/521891**



**DE 18 Rec'd PCT/PTO 19 JAN 2005**

**Certificate of Accuracy**

**TRANSLATION**

**From German into English**

**STATE OF NEW YORK } s.s. :  
COUNTY OF NEW YORK }**

On this day personally appeared before me Elisabeth A. Lucas  
who, after being duly sworn, deposes and states:

That he is a translator of the **German** and English languages by profession and  
as such connected with the **LAWYERS' & MERCHANTS' TRANSLATION  
BUREAU;**

That he is thoroughly conversant with these languages;

That he has carefully made the attached translation from the original document  
written in the **German** language; and

That the attached translation is a true and correct English version of such original,  
to the best of his knowledge and belief.

**SUBSCRIBED AND SWORN TO BEFORE ME  
THIS**

**DEC 23 2004**

*Susan Tapley*

**Susan Tapley**

**Notary Public, State of New York**

**No. 01TA4999804**

**Qualified in Queens County**

**Certificate filed in New York County  
and Kings County**

**Commission Expires July 27, 2006**

*Lucas*

# PATENT COOPERATION TREATY



## PCT

### INTERNATIONAL PRELIMINARY EXAMINATION REPORT

(PCT Article 36 and Rule 70)

Applicant's or Agent's file reference 25225 WO	<b>FOR FURTHER ACTION</b> See Notification of Transmittal of International Preliminary Examination Report (Form PCT/IPEA/416)	
International application No. PCT/EP 03/07902	International filing date (day/month/year) 07.19.2003	Priority date (day/month/year) 07.19.2002
International Patent Classification (IPC) or national classification and IPC A23F3/00		
Applicant SÜDZUCKER AKTIENGESELLSCHAFT		

<p>1. This international preliminary examination report has been prepared by this International Preliminary Examining Authority and is transmitted to the applicant according to Article 36.</p> <p>2. This REPORT consists of a total of 5 sheets including this title page.</p> <p><input checked="" type="checkbox"/> This report is also accompanied by ANNEXES, i.e. sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications made before this Authority (see Rule 70.16 and Instruction 607 of Administrative Instructions of the PCT).</p> <p>These annexes consist of a total of 6 sheets.</p>
<p>3. This report contains indications relating to the following items:</p> <ul style="list-style-type: none"> <li>I <input checked="" type="checkbox"/> Basis of the report</li> <li>II <input type="checkbox"/> Priority</li> <li>III <input type="checkbox"/> Non-establishment of opinion with regard to novelty, inventive step and industrial applicability</li> <li>IV <input type="checkbox"/> Lack of unity of invention</li> <li>V <input checked="" type="checkbox"/> Reasoned statement according to Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement</li> <li>VI <input type="checkbox"/> Certain documents cited</li> <li>VII <input type="checkbox"/> Certain defects in the international application</li> <li>VIII <input type="checkbox"/> Certain observations on the international application</li> </ul>

Date of submission of the demand 12.05.2003	Date of completion of this report 07.08.2004
<b>Name and mailing address of the IPEA</b>   European Patent Office D-80298 Munich Tel. +49 89 2399 - 0, Tx: 523656 epmu d Fax: +49 89 2399 - 4465	<b>Authorized officer:</b>  Rinaldi, F Tel. +49 89 2399-7360  

I. **Basis of the report**

1. This report has been drawn up on the basis of the following elements *(the replacement sheets received by the receiving office in response to an invitation according to Article 14 are considered in the present report as "originally filed" and are not annexed to the report as they contain no amendments (Rules 70.16 and 70.17).):*

**Description, pages:**

1-16 as originally filed

**Claims, No.:**

1-31, 33, 34 received on 05.07.2004 by fax  
32 received on 06.22.2004 by fax

**Drawings, sheets:**

1/10-10/10 as originally filed

2. With regard to the **language**, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

These elements were available or furnished to this Authority in the following language which is:

- ☐ the language of a translation furnished for the purposes of international search (under Rule 23.1(b)).
- ☐ the language of publication of the international application (under Rule 48.3(b)).
- ☐ the language of the translation furnished for the purposes of international preliminary examination (under Rule 55.2 and/or 55.3).

3. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:

- ☐ contained in the international application in written form.
- ☐ filed together with the international application in computer readable form.
- ☐ furnished subsequently to this Authority in written form.
- ☐ furnished subsequently to this Authority in computer readable form.
- ☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
- ☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

4. The amendments have resulted in the cancellation of:

- ☐ the description, pages:
- ☐ the claims, Nos.:
- ☐ the drawings, sheets:

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International application No. PCT/EP 03/07902

5. ☐ This report has been written disregarding (some of) the amendments, which were considered as going beyond the description of the invention, as filed, as is indicated below (Rule 70.2(c)):

*(All replacement sheets comprising amendments of this nature should be indicated in point 1 and attached to this report).*

6. Additional observations, if necessary:

**V. Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement**

1. Statement
- |                               |      |        |      |
|-------------------------------|------|--------|------|
| Novelty (N)                   | Yes: | Claims | 1-34 |
|                               | No:  | Claims |      |
| Inventive Step (IS)           | Yes: | Claims | 1-34 |
|                               | No:  | Claims |      |
| Industrial Applicability (IA) | Yes: | Claims | 1-34 |
|                               | No:  | Claims |      |

2. Citations and explanations

**see separate sheet**

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ACCOMPANYING SHEET**

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**Re point V**

**Reasoned statement under Article 35(2) with respect to novelty, inventive step and commercial applicability; documents and explanations to support this statement**

- 1 Reference is made to the following documents:
- D1: DE 199 43 491 A (SUEDZUCKER AG) March 15, 2001 (2001-03-15)
  - D2: PATENT ABSTRACTS OF JAPAN vol. 007, No. 108 (C-165); May 11, 1983 (1983-05-11) & JP 58 031961 A (MITSUI SEITOU KK), February 24, 1983 (1983-02-24)
  - D3: DATABASE WPI Section Ch, Week 198915 Derwent Publications Ltd., London, GB; Class B05, AN 1989-112222 XP002258688 -& JP 01 060360 A (MITSUI SEITO KK), March 7, 1989 (1989-03-07)
  - D4: PATENT ABSTRACTS OF JAPAN vol. 007, No. 252 (C-194), November 9, 1983 (1983-11-09) & JP 58 138355 A (MITSUI SEITOU KK), August 17, 1983 (1983-08-17)

**Novelty**

- 2 The subject matter of the independent product claims 1 and 20 and the independent use claim 32 is novel (Article 33(2) PCT).
- 2.1 D1, in example 1, discloses a composition comprising 98.4% isomaltulose and 0.5% natural lemon aroma, furthermore additional sweeteners and salts of organic acids. The composition comprises in total 5.0% water and is suitable for use as instant beverage powder within the meaning of guideline C-III 4.8 (see also p.4 lines 24-25).
- 2.2 D2 discloses an instant beverage powder consisting of just 0.2-1.2% Stevia extract, the remainder being palatinose. The water content of the composition therefore appears to be below 5%. The composition is not cariogenic.
- 2.3 D3 discloses an instant beverage powder comprising 86% palatinose, 9% fruit juice powder and also citric acid, sodium citrate and vitamins. The application itself describes the use of up to 95% isomaltulose.
- 2.4 D4 discloses the use of palatinose for sweetening tea. The composition acts against the formation of caries.
- 2.5 None of the documents discloses a beverage powder comprising:
- ≥90% isomaltulose
  - 0.1-5% urea or a derivative thereof.

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**Inventive step**

- 3 The simultaneous use of isomaltulose and urea derivatives in instant beverage powders having said composition solves the technical object of providing tooth-preserving instant beverage powders. Urea and its derivatives have, furthermore, buffering action and intensify the isomaltulose taste (p. 7, paragraph 1). These and other advantages are to be seen from the examples (see, for example, table 1; fig. 5).

**Clarity**

- 4 The description is not adapted to the modified set of claims, since the presence of urea, according to broad sections of the description, is optional and is not shown as part of the invention (Article 6 PCT).